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Interim Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

**IN RE CALIFORNIA BAIL BOND
ANTITRUST LITIGATION**

Master Case No. 4:19-CV-00717-JST

THIS DOCUMENT RELATES TO:

**DECLARATION OF DEAN M. HARVEY
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO ALL-PRO'S MOTION
FOR SANCTIONS**

All Actions

1 I, Dean M. Harvey, declare as follows:

2 1. I am a partner at the law firm of Lieff Cabraser Heimann & Bernstein, LLP (“Lieff
3 Cabraser”), which has been appointed Interim Class Counsel. I have personal knowledge of the
4 facts herein and, if called upon to testify to those facts, I could and would do so competently.

5 **I. Counsel’s Investigation Prior to Filing the Original Complaint**

6 2. Interim Class Counsel Lieff Cabraser, along with its non-profit co-counsel Public
7 Counsel, Towards Justice, Justice Catalyst Law, and the National Consumer Law Center
8 (together, “Plaintiffs’ Counsel”), began their investigation of the California bail industry in June
9 2017.

10 3. Plaintiffs’ Counsel investigated the Defendant Sureties’ filings with the California
11 Department of Insurance (“CDI”), and statements Defendants Sureties made on their websites
12 about premium rates and the availability of advertised discounts or rebates. That investigation
13 revealed that Defendant Sureties’ near-uniform filing of a 10% “standard” premium rate with the
14 CDI. It also uncovered that Defendant Sureties and Bail Agents did not advertise the availability
15 of rebates on their websites, or make public statements with respect to the availability of such
16 rebates.

17 4. Plaintiffs’ Counsel also investigated and analyzed elements of the bail bond
18 market that make it susceptible to collusion, including high barriers to entry, and other aspects of
19 the market that suggested collusion, such as low loss ratios and high profit margins. As part of
20 this analysis, Plaintiffs’ Counsel consulted with several outside consultants, including economists
21 with expertise in the bail and insurance industries. These consultants provided their insights,
22 which lent further support for Plaintiffs’ antitrust claims.

23 5. Plaintiffs’ Counsel also investigated statements made by market leaders, including
24 Defendants William B. Carmichael and Jerry Watson, about competition in the bail industry
25 generally, and efforts to collude to avoid price competition. These statements were identified on
26 current and archived versions of publicly-available websites.

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1 6. Plaintiffs' Counsel also analyzed legal precedent, including the impact of
2 Proposition 103 and the *Pacific Bonding* decision from 2004 holding that decision applied to the
3 bail industry.

4 7. Plaintiffs' Counsel also interviewed industry participants, including the named
5 Plaintiffs.

6 8. Altogether, Plaintiffs' Counsel devoted approximately 668 hours investigating the
7 antitrust claims prior to filing the initial complaint.

8 **II. Additional Investigation Prior to Filing the SCAC**

9 9. Following the Court's April 2020 order granting in part and denying in part
10 Defendants' joint motion to dismiss, Lieff Cabraser conducted additional investigation in
11 connection with preparing the Second Consolidated Amended Complaint ("SCAC"; ECF No. 94).

12 10. In particular, the SCAC contains a detailed description of the aspects of the bail
13 bonds market that make it particularly susceptible to price fixing. *See* SCAC ¶¶ 67-112. These
14 "plus factor" allegations result from Plaintiffs' Counsel's factual investigation of the bail market
15 and evaluation of academic research of the bail bonds market in California.

16 11. Plaintiffs' Counsel carefully reviewed all of the Surety Defendants' filings with
17 the CDI between 2004 and the present. Plaintiffs' Counsel identified the standard premium rates
18 filed by each of the Surety Defendants for every year of the proposed class period, as well as any
19 statements the Surety Defendants made in their filings with the CDI regarding the standard
20 premium rates. That investigation further confirmed that the Surety Defendants filed nearly
21 uniform 10% standard premium rates from 2004 on. *See* SCAC ¶ 7. Plaintiffs' Counsel also
22 reviewed the Surety Defendants' financial disclosures filed with the CDI to identify the sureties'
23 loss ratios and profit margins. That investigation further confirmed that the Surety Defendants
24 had zero or extremely low loss ratios. *See* SCAC ¶¶ 105-07.

25 12. Plaintiffs' Counsel also reviewed the current and archived versions of the Surety
26 Defendants' websites and identified any statements made relating to premium rates or the
27 availability of discounts or rebates. That investigation further confirmed that the Surety

1 Defendants made nearly uniform misrepresentations and omissions that mislead consumers into
2 believing that rebates are unavailable. *See, e.g.*, SCAC ¶¶ 8-9.

3 13. Plaintiffs' Counsel also searched for evidence that the bail agents, including but
4 not limited to the two Bail Agency Defendants named in the SCAC, advertised rebates.
5 Plaintiffs' Counsel's investigation further confirmed that bail agents did not advertise rebates to
6 consumers, and in fact to the contrary made misrepresentations or omissions that mislead
7 consumers into believing that rebates were unavailable. In fact, as set forth in the SCAC,
8 Plaintiffs' Counsel's search only uncovered two instances of a bail agent publicly acknowledging
9 rebating authority pursuant to Proposition 103. *See* SCAC ¶ 92. One of those two instances was
10 a blog posting by "Chad the Bail Guy," a bail agent, stating that his effort to provide lower prices
11 for consumers had resulted in pressure from a "good ol boys club," which "came after [his]
12 license for trying to save clients money." *Id.*

13 14. Defendant All-Pro is one of the bail agents for Defendant Bankers Insurance
14 Company ("Bankers"). With respect to Bankers in particular, Plaintiffs' Counsel's investigation
15 confirmed that Bankers filed the 10% standard premium between 2004 and 2019. SCAC ¶¶ 7;
16 192. Plaintiffs' Counsel reviewed Bankers' annual financial disclosures filed with the CDI,
17 which showed Bankers has consistently experienced zero losses. SCAC ¶ 193. Further, Bankers'
18 standard rate sheet, which it provided to all of its agents (including Defendant All-Pro), states that
19 state bonds over \$500.00 "will be charged 10% of the penal amount," and that "[t]hese rates must
20 be charged by all Agents of Bankers Insurance Company," without disclosing that bail agents
21 have the authority to offer rebates. *See* SCAC ¶ 198. Plaintiffs' Counsel also investigated
22 Bankers' involvement in trade associations, and uncovered that Bankers is a member of the
23 American Bail Coalition ("ABC"), and contributed \$246,563 to the trade association in 2017
24 alone. SCAC ¶ 195. As alleged in the SCAC, trade associations like ABC provided
25 opportunities to conspire and allowed the Surety Defendants, including Bankers, to teach and
26 enforce the conspiracy to Bail Agents and other sureties. SCAC ¶¶ 127-35.

27 15. With respect to the two Bail Agent Defendants, Plaintiffs' Counsel conducted an
28 investigation into their statements regarding premium rates and the availability of discounts or

1 rebates that appeared on the current and archived versions of the Bail Agent Defendants'
2 websites. For Defendant All-Pro, Plaintiffs' Counsel identified several misleading statements on
3 All-Pro's website regarding the standard rates and availability of discounts. Plaintiffs' Counsel's
4 search revealed that in an archived version of the "Rates" page of All-Pro's website from 2008,
5 All-Pro made the following statement:

6 The Department of Insurance regulates the rates all bail agents must charge.
7 Essentially, all bail agents charge the same rates. The only difference is that some
8 bail agents allow the client to pay the balance due over time-regardless of the rate.
9 Failure to charge the proper rate for a bail bond is a crime. That's why ALLPRO
10 BAIL BONDS always charges the rates shown below to ALL clients. (SCAC ¶
11 381)

12 16. On All-Pro's current website, All-Pro states: "In general, the standard industry
13 rate for bail bonds is 10% of the face amount of bail. For example, if the face amount of bail is
14 \$10,000, the fee is \$1,000." SCAC ¶ 380.

15 17. Plaintiffs' Counsel consulted further with economic consultants and economists in
16 preparing the SCAC.

17 18. In total, Plaintiffs' Counsel spent approximately 228 hours investigating
18 Defendants' participation in the bail industry, refining their claims, and preparing the SCAC,
19 between April 13, 2020 and when the SCAC was filed on May 13, 2020.

20 **III. Correspondence with All-Pro Regarding Its Motion**

21 19. All-Pro does not include all of the relevant correspondence regarding its Rule 11
22 motion. I have attached the remaining correspondence here.

23 20. On July 2, 2020, I sent an email to all defense counsel in this action proposing a
24 protective order based on the model protective order for the Northern District. A true and correct
25 copy of that email and proposed protective order is attached hereto as Exhibit 1.

26 21. On July 9, 2020, All-Pro's counsel responded to my email proposing a protective
27 order. A true and correct copy of that email is attached hereto as Exhibit 2.

28 22. On July 2, 2020, I sent an email to Mr. Paisley, All-Pro's counsel. A true and
29 correct copy of that email is attached hereto as Exhibit 3.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed on July 21, 2020 in Kentfield, California.

4 /s/ Dean M. Harvey
5 Dean M. Harvey

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